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February 28, 2018

<u>Erratum</u>

Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Bridging the Digital Divide for Low-Income Consumers*, WC Docket No. 17-287; *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197

Dear Ms. Dortch:

On February 21, 2018, Q Link Wireless, LLC ("Q Link") filed comments[1] in response to the Commission's December 1, 2017 *NPRM* and *NOI* in this proceeding.[2] Those comments provided inconsistent values for the percentage of the U.S. population living in states that have created databases that can be used to verify eligibility under the Lifeline program. On page 11 of the comments, Q Link inadvertently stated that "24 states representing over 71 percent of the U.S. population have already created state eligibility databases that the National Verifier can use to verify eligibility under an API system."[3] The correct value is not over 71 percent. It is approximately 62 percent, as shown in Figure 2 of the comments and in the discussion of the matter in the Introduction and Executive Summary.[4]

A corrected version of the comments is attached to this letter and is intended to replace the previously filed version in its entirety.

Please contact me if you have any questions.

Sincerely,

John T. Nakahata
Counsel for *Q Link Wireless LLC*

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[1] *See* Comments of Q Link Wireless, LLC, WC Docket Nos. 17-287, 11-42, & 09-197 (filed Feb. 21, 2018) ("Q Link Comments").

[2] *See Bridging the Digital Divide for Low-Income Consumers et al.*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155 (rel. Dec. 1, 2017).

[3] Q Link Comments at 11.

[4] *Id.* at vi, 12.

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Bridging the Digital Divide for Low-Income Consumers	)	WC Docket No. 17-287
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	WC Docket No. 09-197
Telecommunications Carriers Eligible for Universal Service Support	)	

CORRECTED COMMENTS OF Q LINK WIRELESS, LLC

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February 21, 2018

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INTRODUCTION AND EXECUTIVE SUMMARY

Q Link Wireless, LLC ("Q Link") is a Florida-based company that has grown from no customers in 2011 to the third largest Lifeline provider in the country, serving nearly 2 million low-income households predominantly outside of major metropolitan areas. As a Mobile Virtual Network Operator ("MVNO"), Q Link has achieved its growth by developing an efficient, no-street-agent, direct-to-consumer means of reaching low-income consumers in suburban and rural areas not reached by other Lifeline providers; indeed, Q Link has significant numbers of Lifeline subscribers in rural areas of Michigan, Louisiana, Kentucky, Missouri, and many other states. Q Link also has emerged as a leading Lifeline provider while protecting against fraud and abuse, as shown by the completion of 43 audits or Payment Quality Assurance (PQA) reviews, including a successful biannual audit completed in the third quarter of 2017 and a successful independent audit by an USAC-retained firm completed in November 2017, without a single finding of an inadequately documented or duplicate subscriber. In short, Q Link is proof that Lifeline can be delivered free of waste, fraud, and abuse to in-need Americans wherever they may live, and can fulfill the Communications Act's statutory universal service mandates to ensure that low-income Americans have access to telecommunications services that are comparable to those available to other Americans.

MVNOs like Q Link play an essential role in delivering the Telecommunications Act of 1996's promise of affordable telephone service for all Americans, including low-income Americans. Wireless—not wireline—service has emerged as the way that a majority of all American receive telephone service,[1] with household spending on wireless reaching nearly four

[1] Stephen J. Blumberg, Ph.D., and Julian V. Luke, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January-June 2017*, at 2 (Dec. 2017),

times wireline.[2] Two-thirds of households in poverty subscribe only to wireless service,[3] and over 90 percent of Lifeline service today is delivered through wireless service. MVNOs provide over 70 percent of all Lifeline service.

And the Commission's long-running policy to permit MVNOs to provide Lifeline service—which was established in 2005 with the waiver granted to TracFone and subsequently expanded to other providers—has successfully increased telephone subscribership among the country's poorest households. FCC data shows that telephone subscribership in households with incomes below $23,210 (2016 dollars—less than the Federal Poverty Guidelines for a family of four) increased from 86.4 percent in 2005 to 93.2 percent in 2016.[4] Even among the next-poorest group (incomes between $23,211 and $46,419 (2016 dollars)), household telephone subscribership increased over the same period from 91.2 to 96.4 percent.[5] The Commission cannot overlook the positive gains in outreach, including in rural areas, brought by MVNOs.

The growth of MVNOs as the predominant way of delivering Lifeline services is the result of market-driven specialization. Other than Sprint (through its Assurance brand), none of the nationwide wireless carriers are among the top 20 wireless Lifeline providers. AT&T,

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https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201712.pdf ("Wireless Substitution Report").

[2] U.S. Bureau of Labor Statistics, *Table 1101. Quintiles of income before taxes: Annual expenditure means, shares, standard errors, and coefficients of variation, Consumer Expenditure Survey, 2016*, at 4 (Aug. 2017), https://www.bls.gov/cex/2016/combined/quintile.pdf (showing that the on average U.S. households spent $1,124 on wireless services in 2016, but only $307 on fixed residential telephone and VoIP services during the same period) ("U.S. Bureau of Labor Statistics Table 1101").

[3] Wireless Substitution Report at 3 & Table 2.

[4] FCC, *Universal Service Monitoring Report, 2016*, at Table 6.2 (rel. Jan. 13, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-343025A1.pdf ("Universal Service Monitoring Report 2016").

[5] *Id.*

Verizon, and T-Mobile have largely chosen to exit or not offer Lifeline service. This makes economic sense. It is far more lucrative for these carriers to focus their marketing on high value customers, and to leave the low-margin Lifeline business to MVNOs. Through wholesale sales to MVNOs (for which rates are unregulated), the nationwide wireless carriers can draw more revenue from Lifeline and expand investment in their networks.

Q Link provides an instructive example of this specialization at work. As an MVNO, Q Link has developed proprietary, specialized and efficient methods of marketing to low-income consumers. These methods have allowed Q Link to target smaller cities, suburban and rural areas not served by other mobile Lifeline providers, whether MVNOs or facilities-based. In fact, more than 62 percent of zip codes in which Q Link has Lifeline customers are classified as rural, and more than 67 percent of Q Link subscribers live in rural or suburban areas.

Accordingly, eliminating MVNOs from Lifeline will serve only to leave significant parts of the country without any mobile Lifeline provider—even though the Commission has already found mobile wireless to be a universal service—and to make Lifeline service less efficient, not more. The Commission's high cost support mechanisms are already reducing the number of facilities-based Mobile Network Operators ("MNOs") that will be ETCs as it implements Mobility Fund II, which will not support multiple wireless providers or providers in areas where LTE service is provided by an unsubsidized provider.[6] Moreover, because underlying, facilities-based MNOs are not regulated in the wholesale rates they charge, they already obtain the maximum possible revenue from MVNO sales, which they can devote to facilities-deployment. Especially in light of the growth of MVNOs and the decline of MNOs in providing Lifeline

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[6] *See Connect America Fund, Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152 (2017) ("*Mobility Fund II Order*").

service, there is no basis for assuming that a vertically integrated MNO will be more efficient at providing and supporting retail Lifeline service than an MVNO.

Eliminating MVNOs is not necessary or appropriate for further eliminating waste, fraud and abuse. The Commission, with the National Verifier, has nearly completed the development of the tools that it needs to be able to stomp out waste, fraud and abuse without forcing MVNOs out of the critical, market-based role they play in delivering Lifeline services that keep low income Americans connected. Once fully implemented (which should be able to be done within a few months), the National Verifier, and the already existing National Lifeline Accountability Database, will remove Lifeline carriers from making judgments as to the identity and eligibility of Lifeline applicants, and will place that determination in the hands of the Universal Service Administrative Company ("USAC"), and, through state eligibility databases, the states. Twenty-four states, containing 62 percent of the total U.S. population, already have a state eligibility database in place that providers use today and that can be dipped by the National Verifier. The Verifier will also allow USAC to implement a standardized check against the use of the identities of dead individuals, directly addressing one of GAO's criticisms.

But the Commission must direct USAC to supplement the Verifier with application programming interfaces (APIs) that allow ETCs to communicate customer enrollment information electronically with the Verifier to confirm applicant eligibility. USAC provides API access today to enable ETCs to access NLAD, and has seen its management costs fall as a result. Not only will API capabilities free USAC from an impossible customer interaction burden, they will also empower USAC to track the activity of individual agents to further prevent fraud in the enrollment process.

Accordingly, with a National Verifier and carrier APIs in place, the Commission can implement the following reforms to Lifeline which should be sufficient to detect and halt fraud, waste and abuse:

- Require all providers to submit an applicant's identity information to USAC so that USAC can review the information to determine whether the applicant's identity is confirmed. This includes any supplemental documentation submitted in the case of an initial NLAD rejection (but, for efficiency and to reduce the burden on USAC, it can be limited only to documents sufficient to verify identity). USAC, rather than providers, would be the entity making the final determination of identity validation, although providers should be able to make a preliminary determination of valid identity as a basis to begin to provide service and obtain reimbursement, subject to true-up once USAC makes its determination. This is consistent with the NPRM's proposal for USAC dispute resolution, but will avoid delaying service for eligible consumers if USAC cannot complete its review quickly.
- For any applicant whose eligibility cannot be confirmed through a state eligibility database, require all providers to submit the applicant's eligibility documentation to USAC so USAC, rather than ETCs, can determine whether the applicant is eligible. This includes any supplemental documentation submitted in the case of an initial National Verifier rejection (limited to documents sufficient to verify identity). USAC, rather than providers, would be the entity making the final determination of an applicant's eligibility validation although providers should be able to make a preliminary determination of valid eligibility as a basis to begin to provide service and obtain reimbursement, subject to true-up once USAC makes its determination. This is consistent with the NPRM's

proposal for USAC dispute resolution, but will avoid delaying service for eligible consumers if USAC cannot complete its review quickly.

- Require recertifying Lifeline subscribers who cannot be verified through an eligibility database and who cease to be eligible under the program used to verify eligibility to submit new documentation of eligibility when recertifying eligibility, while providing a mechanism to prevent service disruptions pending USAC review.
- Direct USAC to implement a screen of deceased identities as part of its identity verification, as well as to flag any Lifeline subscribers who were eligible, but who subsequently die. This should eliminate the "dead subscribers" issue flagged by GAO. Although not previously available, this now can easily be implemented using recently implemented changes by Lexis/Nexis.
- As proposed by the NPRM, require all agents involved in direct contact with consumers who are completing Lifeline service applications to register with USAC, and require USAC to verify those agents' identities in a manner similar to verifying Lifeline applicants' identities. This will prevent the creation of false identities for agents.
- Require all applications transmitted to the National Verifier to contain the agent's identity, IP address and, where possible, geolocation information. This will allow USAC to monitor fraud by specific agents, and also prevent an agent from sharing credentials with other, non-registered individuals.
- Direct USAC to compile lists of postal addresses likely to have large number of independent economic households, but which not have individual unit numbers in the postal address, such as long-term care facilities, homeless shelters and assisted-living facilities. This will allow USAC to flag instance in which there may be valid suspicions

of manufactured applications, but not create undue paperwork in situations where a large number of individuals with the same address is reasonable. Accordingly, the Commission should not require certifications from facilities-managers. This is not likely to be timely or effective, and will likely result in denying service to eligible individuals far more often than preventing fraud.

- Implement risk-based auditing in addition to maintaining the biennial audit requirement for entities receiving large amounts of Lifeline support. Risk-based auditing is an important extra safeguard.
- Prohibit commissions for personnel who review identity or eligibility of applicants or recertifying consumers.

Although Q Link does not itself employ street agents, it believes that banning commissions for such agents would be premature. It would be better not to take this step without further experience after first implementing other reforms, as this additional step should not be necessary once USAC is the final arbiter of identity and eligibility, and in light of the other reforms outlined above.

In terms of setting a self-enforcing budget, the Commission must take care to ensure that any budget meets the sufficiency requirement of Section 254(e). Lifeline has always been, and continues to be, an underpenetrated service that does not reach a substantial majority of its eligible population. This is especially the case in rural and suburban areas served by Q Link that cannot feasibly be served using the street agent model. Furthermore, in implementing any self-executing budget, the Commission should allow unspent funds to carryover, and should take care to both provide carriers and consumers with sufficient time to adjust to reduced support levels, and ensure that mandatory service levels are adjusted accordingly. Reduced support as a result of a budgetary mechanism will necessarily mean reduced service levels and/or higher consumer charges. In either case, this cannot simply be sprung on providers and consumers.

The *NPRM* incorrectly suggests that it is improper for Lifeline providers to use their profits to subsidize handsets for Lifeline subscribers. The Tenth Circuit's decision in *Sorenson v. FCC*, 567 F.3d 1215 (10th Cir. 2009) is directly on point. Here, as with the Video Relay Service ("VRS") at issue in *Sorenson*, the Commission has adopted a fixed support amount, rather than calculating the support based on costs plus a permitted rate-of-return. In a fixed support model, the provider can spend its resources at its discretion so long as it provides the qualifying service to the customer. Section 254(e) does not authorize the Commission to dictate whether ETCs can forego additional earnings to provide their customers with more savings.

Finally, the Commission should ensure that remaining reforms meet the needs of low-income consumers. The Commission should adopt the "units" proposal advanced by TracFone in 2017 and Q Link in 2016 as an option for Lifeline providers to meet minimum service standards. The "units" methodology will shore up the Commission's jurisdiction to continue broadband requirements in the wake of the *Restoring Internet Freedom Order*, and provide consumers with greater choice in deciding how they want to use their Lifeline service, while still holding providers to a minimum service standard. The Commission also should reject the proposals in the *NOI* to set maximum discount amounts or to limit Lifeline only to rural areas. Both proposals harm Lifeline's principal objective in maintaining affordability for low-income Americans, many of whom are unbanked and for whom even small payments are a hardship, whether they live in rural or urban areas. Indeed, even with Lifeline, the lowest quintile of U.S. households (incomes below $19,868) already pay a far higher percentage of post-tax income for telephone services (6.1 percent) than do all other Americans. These proposals would only make telephone services less affordable, harming, rather than improving access to universal service.

I. Q LINK AND ITS LIFELINE CONSUMERS

Q Link is one the of nation's leading providers of Lifeline service. It operates as an MVNO, and purchases wireless service from Sprint, its wholesale provider. Q Link's competitive advantage has been its development of industry-leading clean operations through highly automated enrollment. These operations allow Q Link to employ a direct-to-customer distribution model that facilitates customer outreach and removes any discretion at the point of sale; indeed, unlike many other Lifeline providers, Q Link has not used and does not use street agents whatsoever. Q Link's innovative system has allowed it to reach Lifeline-eligible in rural and suburban areas that historically have been hard to enroll, while using technology to maintain strict safeguards on eligibility. In short, Q Link's unique Lifeline operations promote the Commission's goal of expanding broadband access to consumers for whom affordability remains a significant obstacle. Perhaps more importantly, they have shown that compliance with the Communications Act's universal service mandate can be achieved while also protecting against waste, fraud, and abuse.

Q Link's model works. Over the past 15 months, the company has grown by 101 percent—all organically—and has emerged as the third largest Lifeline provider in the United States and as a significant employer in southern Florida.[7] Q Link currently serves more than 1.9 million households, is an ETC in 30 jurisdictions including Puerto Rico, and has built its base of subscribers without operating in high-population states such as California, Illinois, New York, or Florida.[8]

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[7] Q Link proudly employs 280 people at its headquarters in Dania Beach, Florida.

[8] Unfortunately, inaction on Q Link's application to the FCC for ETC designation in the FCC default states, which has been pending for *six years*, has prevented Q Link from serving customers in Alabama, Connecticut, Delaware, Florida, New Hampshire, New York, North Carolina, Tennessee, Virginia and the District of Columbia.. While Texas and Maine are now

As reflected in its unique rural-suburban customer base, Q Link's technology-driven outreach and enrollment process has helped low-income Americans overcome barriers to wireless access in addition to affordability. Because Q Link does not utilize street agents, and instead reaches out to consumers when they are online (often accessing the internet at work, through a public library, or using a friend's internet access service), more of Q Link's customers are located in rural and suburban communities than other Lifeline providers. This is not surprising, because street agents to make a living must focus their activities in areas of high concentrations of potentially eligible individuals. Moreover, Q Link devotes significant resources to target rural and suburban consumers in particular, with the express goal of reaching low-income communities underserved by the street agent model.

As a result of these efforts, more than 67 percent of Q Link subscribers are from rural or suburban America. In fact, in, West Virginia, Louisiana, Vermont and Maine, a substantial majority of Q Link's customers live in rural areas—as do a near majority of its customers in Kentucky. In addition, 62 percent of zip codes in which Q Link has a customer are rural. And Q Link fully expects to improve on these initial results as it works to develop additional means of reaching low income Americans in suburban and rural communities, including through the use of automated kiosks that can be placed in small, local convenience stores.

The consumers that Q Link reaches are truly needy, for whom paying anything for telephone service is difficult. Most of Q Link's customers have difficulty making cash payments of even $5 or $10. 56 percent of Q Link customers are "unbanked," meaning that they cannot easily purchase "top-ups" under prepaid plans due to a lack of access to the financial system.

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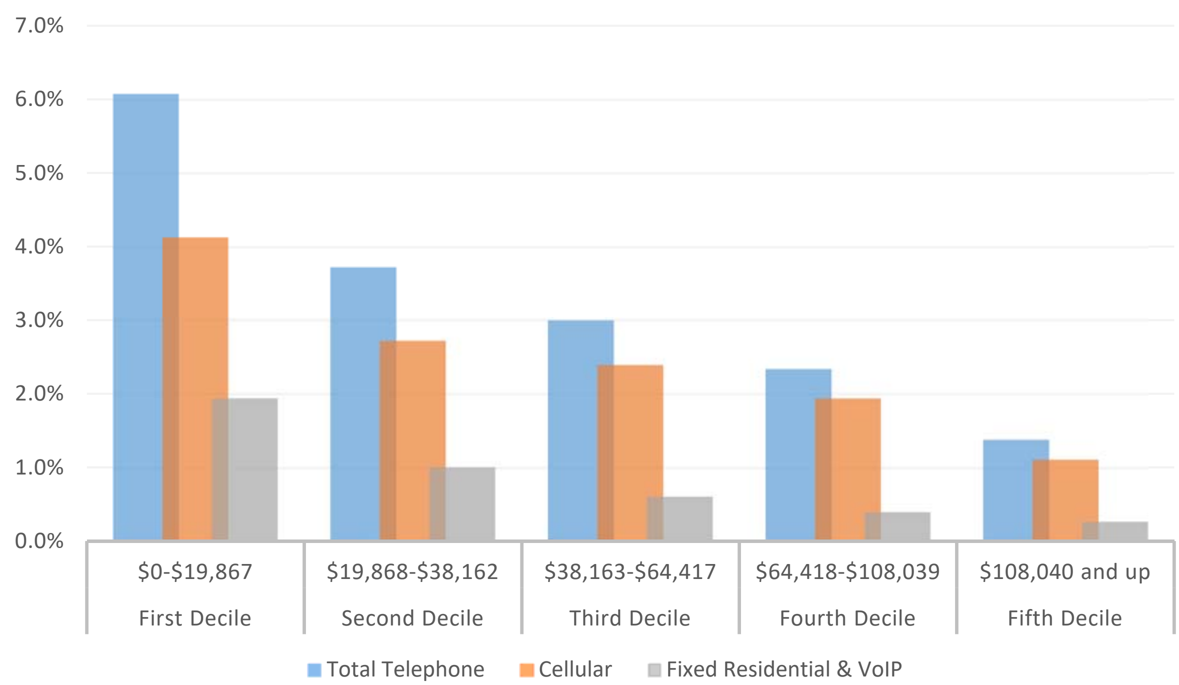
also FCC default states, Q Link obtained ETC designations from those states while they still had jurisdiction to grant ETC designations.

And 71 percent of Q Link's customers sign up from a business or public internet address, rather than a private address, while many of the remaining 29 percent sign up at community centers or using a friend's internet service, showing that online enrollment can break down barriers even for consumers that lack a home internet connection.

Q Link's understanding of the financial burdens facing its customer base is consistent with data from the Bureau of Labor Statistics' Consumer Expenditure Survey. According to data from that survey, the lowest income Americans pay a much higher percentage of their after-tax income for telephone service as shown in Figure 1 below.

Figure 1: Telephone Expenditures as a Share of Post-Tax Income



The data also shows that as incomes increase, households purchase more telecommunications, demonstrating clearly that the need to pay for other critical household expenditures suppresses telecommunications purchases for lower income Americans.[9] FCC

[9] U.S. Bureau of Labor Statistics Table 1101.

household telephone subscribership statistics similarly show that as household incomes increase, consumers are more likely to have access to a telephone (whether fixed or mobile) at home.[10] And mobile wireless service is particularly critical to affordable connections for these consumers, as 67.5 percent of adults living in poverty and 61.6 percent of adults living in households with income between 100 and 200 percent of the Federal Poverty Guidelines now only receive mobile wireless service. Taken as a whole, these statistics contradict the *NPRM*'s assertion that even without Lifeline, low income Americans would be able to receive affordable telephone service.[11]

Importantly, Q Link has achieved its remarkable growth rate by serving *eligible* populations, as shown by its proven track record of protecting against waste, fraud, and abuse. In its relatively short history, Q Link has successfully completed 43 audits or PQA reviews, including a successful audit pursuant to the FCC's 2017 biennial audit requirement, and a separate audit in 2017 conducted by an outside audit firm retained by USAC. *None of these*

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[10] *See supra* note 4 (showing a 98 percent voice penetration rate for households with incomes at or above $92,839, in contrast to 93.2 percent and 96.4 percent for households below $23,211 and between $23,211 and $46,419, respectively).

[11] *See Bridging the Digital Divide for Low-Income Consumers et al.*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, ¶ 75 (rel. Dec. 1, 2017) ("*NPRM*"). The *NPRM* erroneously cites the national average monthly urban rate as $25.50, when in fact it is $30.27 (including the federal subscriber line charge). Wireline Competition Bureau, *2018 Urban Rate Survey – Rates for Fixed Voice Service*, *Methodology* (rel. Nov. 13, 2017), https://www.fcc.gov/sites/default/files/2018_urs_voice_methodology.docx ("2018 Urban Rates Survey Methodology"). In addition, the highest surveyed urban rate was $64.99, with two standard deviations above the mean at $45.38. Wireline Competition Bureau, *2018 Urban Rate Survey – Rates for Fixed Voice Service*, *Results* (rel. Nov. 13, 2017), https://www.fcc.gov/sites/default/files/2018_urs_voice_website_data.xlsx; 2018 Urban Rates Survey Methodology. This means that even if the mean rate of $30.27 per month were affordable, there are significant numbers of urban consumers with rates above that level. Notably, the FCC's Urban Rate Survey measures fixed service voice rates, not mobile service rates.

audits resulted in adverse findings of any kind—not a single duplicate subscriber or with an inadequately documented identity or eligibility.

II. THE COMMISSION SHOULD COMPLETE IMPLEMENTATION OF THE NATIONAL VERIFIER WITH APIS TO PERMIT PROVIDERS TO SUBMIT NECESSARY IDENTITY AND ELIGIBILITY INFORMATION COMBINED WITH FURTHER REFORMS TO ELIMINATE WASTE, FRAUD AND ABUSE.

In the *2016 Lifeline Order*, the Commission established the National Verifier to facilitate Lifeline program eligibility determinations and the enrollment of qualifying low-income subscribers. As the Commission explained, the National Verifier was intended to "protect against and reduce waste, fraud, and abuse," "improv[e] the enrollment experience" for eligible beneficiaries, and "lower costs to the Fund and Lifeline providers through administrative efficiencies."[12] In the *NPRM*, the Commission seeks comment on improvements to the National Verifier, including "ways to ensure the Commission can partner with states to facilitate [its] successful implementation, and other "steps to encourage cooperation and collaboration between the states, the Commission, and USAC."[13]

Q Link enthusiastically supports the development of a National Verifier, and applauds the Commission for its progress toward implementation. But to meet the Commission's goals—chief among them the prevention of waste, fraud, and abuse—the Commission must direct USAC to create APIs that allow ETCs to assemble documentation on behalf of users and communicate with the National Verifier electronically to verify eligibility. This step will ensure that the National Verifier proves successful, while enabling practical, targeted reforms to combat waste, fraud, and abuse in the enrollment process. By combining API-based techniques with

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[12] *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4038, ¶ 128 (2016) ("*2016 Lifeline Order*").

[13] *NPRM* ¶ 61.

other fraud prevention measures, the Commission can improve participation by eligible consumers while also improving the integrity of the Lifeline program.

With many states having implemented eligibility databases, much of the work toward an API-based solution has been done already. The Commission should use that momentum to ensure that the National Verifier reflects the state of technology today, minimizes opportunities for fraud, and makes the enrollment process for eligible low-income consumers as seamless as possible.

A. APIs Will Be a Crucial Step Forward for National Verifier Implementation.

Despite overwhelming industry support, USAC decided not to create APIs to facilitate machine-to-machine interactions in the enrollment process when it announced its plans for implementing the National Verifier last July, and has not revisited the issue in its recent plan revisions.[14] If allowed to stand, USAC's current plans would jeopardize the fundamental viability of the National Verifier—and low income consumers' access to Lifeline services that soon will depend on it.[15] The Commission must direct USAC to create APIs that allow carriers,

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[14] USAC, *Lifeline National Verifier Plan* (July 2017), http://www.usac.org/_res/documents/li/pdf/nv/Draft-National-Verifier-Plan.pdf; USAC, *Lifeline National Verifier Plan* (January 2018), https://usac.org/_res/documents/li/pdf/nv/2018-January-National-Verifier-Plan.pdf (updating the July 2017 plan, but without supporting carrier APIs).

[15] *See* Letter from John Nakahata, Counsel, Q Link Wireless, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 (filed Aug. 10, 2017) ("Q Link August 2017 Ex Parte"); Letter from John Nakahata, Counsel, Q Link Wireless, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 (filed Sept. 8, 2017) ("Q Link September 2017 Ex Parte"). Both letters are reproduced as filed in Attachment A. *See also* Letter from John Heitmann, Joshua Guyan, and Jennifer Wainwright, Counsel to the Lifeline Connects Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-42, 10-90, and 09-197, at 2 (filed Sept. 11, 2017) (expressing concern about USAC's implementation plan, and supporting the API-based "proposal crafted by CGM, LLC, submitted to the Commission on September 8, 2017"); Letter from Mitchell F. Brecher, Counsel, TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42, at 1 (filed Sept. 29, 2017) ("concur[ring] with" the concerns raised by Q-Link and the Lifeline Connects Coalition "and with the solutions proposed therein," and explaining that it would be "counterintuitive and indeed, ironic [for] a system designed to

rather than USAC, voluntarily to undertake the laborious process of interfacing directly with the customer to collect enrollment information and identification and eligibility documentation, and communicate that data electronically with the National Verifier to verify eligibility. A proposed implementation of an API-based National Verifier which has garnered wide support is summarized below, and described in greater detail in previously submitted ex parte letters[16] that are attached hereto as Attachment A.

1. Without APIs, USAC Will Face an Impossible Burden—and the National Verifier Initiative Will Fail as a Result.

It is difficult to overstate the risk of failure of a National Verifier implemented without carrier APIs. By forcibly separating service providers from the initial process of consumers enrolling in the Lifeline program, USAC's current National Verifier implementation plan would eliminate the critical support and infrastructure that ETCs provide in helping consumers assemble and submit the information and documents necessary to verify identity, residence, and eligibility. Low-income consumers often have many questions as they attempt to provide their information. They also commonly enter data with errors, fail to supply complete addresses (due to, for example, missing apartment numbers), supply addresses in the wrong format, use nicknames, and supply the wrong or illegible document. They provide originals instead of copies of sensitive documents like a driver's license or social security card, which must be carefully returned. Consumers also start and stop, and then resume the enrollment process as

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facilitate access . . . to telecommunications services and advanced services . . . [to] deploy an enrollment and eligibility determination process using antiquated technology"); Letter from Mitchell F. Brecher, Counsel, TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 17-287, 11-42, 09-197, at 1-5 (filed Feb. 20, 2018) ("TracFone February 2018 Ex Parte") (urging "the Commission and USAC to develop APIs for use by service providers").

[16] Q Link August 2017 Ex Parte; Q Link September 2017 Ex Parte.

they retrieve necessary documents, and need an affordable, convenient, and reliable method to send in copies of their documentation.

To illustrate the enormous levels of support required to manage these issues, consider the experience of Q Link. Each day, Q Link receives approximately 50,000 phone calls, 4,000 emails and 24,000 documents from applicants or prospective applicants (as distinguished from existing customers) as they go through the enrollment process.[17] Q Link must respond to each of those calls and emails, and review all documents submitted, in order to respond to questions and help potential customers submit the information and documents they need to demonstrate their identity and eligibility for Lifeline. (Q Link also receives a substantial number of calls every day from individuals who are customers of other carriers, but who call Q Link out of confusion.) Moreover, to facilitate the submission of eligibility documents, Q Link has established relationships with services such as UPS to allow consumers to use fax machines at UPS Stores, with the charges billed to Q-Link. And when Q Link collects eligibility documentation today, it receives an average of four to five documents from each applicant, due to consumers supplying multiple copies, the wrong document or illegible copies. Q Link also runs processes to correct for consumer errors and deficiencies, which allows consumers to stop, and then resume the application at the point they left off.

There is no reason to believe that USAC will be able to step in to fill the void left by carriers like Q Link—indeed, the expectation that USAC will do so is a disaster waiting to happen. As USAC itself explained to GAO, USAC's "inadequate operational capacity to effectively manage new processes and high volumes of eligibility verifications" is one of the

[17] *See also* TracFone February 2018 Ex Parte at 2 (noting that TracFone "processes approximately 20,000 applications each day, seven days a week").

challenges it will face to launch and operate the National Verifier successfully.[18] Yet that is precisely what USAC will be required to do without the use of carrier APIs. USAC will be left to answer the never-ending stream of calls concerning enrollment in the Lifeline program, with call volumes reaching the *millions* each month. USAC will be left to review application materials, and to identify and help consumers fix common application errors and deficiencies. USAC will be left to handle calls from customers post-enrollment, who might confuse USAC for a service provider given USAC's transformation into an entity that interfaces directly with consumers. In addition, USAC would face the unnecessary burden of processing applications that the carrier will later have to deny due to lack of coverage or ETC certification in the area where the customer resides—applications that, with a carrier-initiated process, would never make it to the Verifier in the first place.

The inevitable result of these burdens is that Lifeline consumers will not receive the support that they need, and that carriers are trained and already equipped to provide. And without such support, Lifeline and the National Verifier will fail. Consumers will be effectively denied access to Lifeline services, as they will become frustrated with navigating the USAC enrollment process and simply give up.

Importantly, allowing service providers and consumers to access to a web portal to conduct manual checks on eligibility cannot substitute for carrier APIs. As an initial matter, even with access to a manual web portal, USAC would still have to assume a central customer engagement role that it is not equipped to handle. Moreover, as TracFone recently explained, a manual web portal process would still require multiple rounds of information entry by the

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[18] Government Accountability Office, *Additional Action Needed to Address Significant Risks in FCC's Lifeline Program*, GAO 17-538, at 51 (May 30, 2017) ("GAO May 2017 Report").

customer, and lead to a "dramatic[] delay [in] the processing time of all applications."[19] Perhaps most importantly, to the limited extent service providers managed to leverage a web portal to ease the burden on USAC, their efforts would rely on a street-agent model, as service provider representatives would have to assist customers to check their eligibility. Steering the industry toward a street-agent model through poor implementation of the National Verifier in this manner would introduce unnecessary inefficiencies in the enrollment process, risk encouraging waste, fraud, and abuse, and hamper efforts such as those implemented by Q Link to target under-penetrated rural and suburban populations.[20]

2. APIs will make the National Verifier a success and can easily be added.

There is another option. With the top 10 ETCs (wireless and wireline) serving nearly 90 percent of all Lifeline users, the National Verifier will operate more efficiently if carriers have the option to assemble documentation on behalf of users and present information electronically to the National Verifier to verify eligibility. These communications can be made possible by carrier APIs, and will allow USAC to take on the more manageable task of directly handling all customer interactions over eligibility and identity verification for 10 percent of Lifeline users.

Under this proposal, which is described in more detail in Attachment A, ETCs would collect personal information from the applicant, run their own verifications and error identification processes, and then communicate on a machine-to-machine basis with the National Verifier using APIs to verify addresses, identity, and to check for duplicates. ETCs would

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[19] TracFone February 2018 Ex Parte at 2 (noting that the web portal component of the National Verifier plan is "neither practical nor feasible").

[20] For the same reasons, the Commission should be careful to ensure that other elements of the National Verifier plan are consistent with online enrollment. *See id.* at 4 (discussing concerns that the National Verifier plan, as revised in January 2018, will undermine the completion of applications "via telephone . . . website and fax").

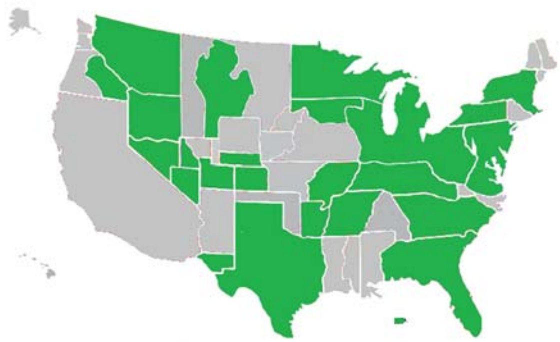
confirm that the applicant lives in a state where the ETC has an appropriate designation, and that the ETC actually covers the applicant's address, to avoid burdening the National Verifier with moot applications. Once all of these initial steps are complete, the ETC would communicate information that has survived these checks for reliability and relevance to the National Verifier using APIs. ETCs also would work with each applicant to collect documentation for proof of identity and eligibility, and to transmit them to the National Verifier. The National Verifier would then make the ultimate determination on subscriber identity and eligibility by checking the carrier-submitted applicant information against federal and state eligibility databases. If necessary—for example, in cases where the applicant is not found in an eligibility database but has proof of eligibility or for states that have not yet implemented a state eligibility database—these documents can be reviewed by the National Verifier to make a final eligibility determination.

This recommendation is completely feasible even in the short timeframe before the anticipated deployment of the National Verifier, and especially with USAC making further revisions. First, it would fully leverage the existing NLAD/carrier enrollment infrastructure. It would require only modifications to four existing APIs, and the creation of one new API, as Q Link explained in its previous pleadings.[21] Second, from a software development perspective, Q Link believes that these solutions would not add significant development and testing time, which could potentially occur alongside other activities or even during soft launch. Finally, as illustrated below, 24 states representing nearly 62 percent of the U.S. population have already created state eligibility databases that the National Verifier can use to verify eligibility under an

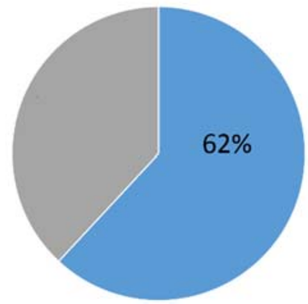
[21] *See* Q Link September 2017 Ex Parte at 5.

API system. Indeed, because of these databases, the super majority of Lifeline enrollments are entirely API-based today.

Figure 2: Existing State Eligibility Databases That Can Be Leveraged for API-Based Verification



States with eligibility databases (map distorted by population)



Percentage of population covered by a state eligibility database

The time to implement APIs is now. Indeed, USAC recently identified the first five National Verifier states. All five will require considerable manual review of eligibility documentation by the National Verifier because eligibility data in those states are not comprehensive. The proposed API solution, if implemented promptly, would facilitate that review effort for applicants and for USAC, by ensuring that USAC receives legible copies of correct eligibility documentation.

B. APIs Will Allow the Commission To Take Additional Steps to Enhance Waste, Fraud and Abuse Protections Without Eviscerating the Lifeline Program.

Perhaps most importantly, the creation of carrier APIs will empower the Commission to adopt reforms that target the biggest sources of waste, fraud and abuse in the industry today—without also destroying the program in the process. After directing USAC to incorporate APIs in its implementation of the National Verifier, the Commission should adopt the following targeted reform proposals, many of which will rely on, or can be enhanced by, carrier APIs.

1. The Commission should implement registration of all street agents, and require all National Verifier submissions to include the street agent registration number and, where possible, agent geolocation information when uploading a consumer's application or documents.

The Commission should begin by using APIs to promote stronger agent accountability through the creation of an agent registration database. This proposal would follow through on the Chairman's July 11, 2017 directive to USAC,[22] and leverage APIs to enhance the fraud prevention capabilities of an agent registration system. With an agent registration database, the National Verifier can gain unprecedented visibility into enrollment activity on an agent/ETC-specific basis, which will enhance its fraud detection abilities, and deter bad actors from abusing the program in the first place.

To implement this reform, the Commission should register agents by collecting their name, address, date of birth, and social security number, and issuing them a unique agent ID. These identities should be verified by USAC in the same manner as Lifeline applicants. The Commission also should require agents to be identified on any applications that they handle. Armed with this information, the Commission can directly tie any fraudulent activity to specific individuals that initiated the enrollment process, even across multiple ETCs in circumstances when agents sell for more than one ETC, and bar participation by specific, problematic agents across all ETCs. Registration also would create direct documentary evidence that does not rely on carrier records, which will facilitate criminal prosecutions.

Importantly, as Q Link has suggested,[23] the National Verifier should use APIs to collect geolocation data for the agents assisting with enrollment. Since an agent cannot be in two places

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[22] Letter from Ajit V. Pai, Chairman, FCC, to Vickie Robinson, Acting CEO and General Counsel, USAC, at 4 (July 11, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-345729A1.pdf.

[23] *See* Q Link September 2017 Ex Parte at 4 & p.3 of attachment.

at once, this step will prevent code-sharing, further enhancing accountability and preventing fraud.

2. The Commission Should Use the National Verifier with API to Have USAC Verify Identity and Eligibility for Every Lifeline Enrollee.

As discussed above, the National Verifier, equipped with APIs, can interact with carriers electronically on an automated, machine-to-machine basis to facilitate the collection and presentation of identify and eligibility information for Lifeline applicants. That effort will allow USAC to verify identity and eligibility for *every Lifeline enrollee*—and to do so efficiently, without establishing an impossibly large and complex operation to interface directly with each and every Lifeline consumer.

The National Verifier's role will take a significant step forward in preventing waste, fraud, and abuse. While ETCs can continue to perform their own checks for identity and eligibility to facilitate the enrollment process, no applicant will be enrolled unless the National Verifier ultimately verifies both. Moreover, an API-based process would incentivize carriers to invest in automated systems that reduce reliance on street agents, who can have the wrong incentives. Indeed, without APIs, carriers may have to increase their reliance on street agents to help consumers navigate the National Verifier's enrollment eligibility website.

To provide a balanced mechanism to protect against delaying Lifeline service for low income Americans simply because of USAC backlogs, while USAC should make the ultimate determination of whether an applicant has adequately verified identity and eligibility in cases of disputes, carriers should be permitted to make a preliminary determination of valid identity and eligibility, and to initiate service and reimbursement on that basis. In the event USAC ultimately disapproves the carrier's preliminary determination, the reimbursements paid for that subscriber would be trued up so that there is no overpayment. In this way, eligible consumers can receive service timely and not have applications held up pending USAC review, but carriers will also have an incentive to be judicious about making preliminary determinations because they will incur service costs, but ultimately lose support in the event that their preliminary determinations are not sustained.

3. The Commission should direct USAC to use the National Verifier to implement a uniform screen for deceased applicants.

As highlighted by the Government Accountability Office (GAO) in its recent evaluation of risks in the Lifeline program, subscribers (or agents) may commit fraud by utilizing the identities of deceased individuals to enroll in Lifeline.[24] Since GAO highlighted this problem, Q Link leveraged its technology-driven approach to Lifeline enrollment to implement screens that prevent this kind of abuse. Lexis/Nexis recently incorporated the Social Security Death Master Index into its identification of dead individuals, which will facilitate USAC incorporating that screen into its processes.

Even though Q Link has already done the work, it still believes that USAC should conduct the screening for fraudulent deceased subscriber enrollments through the use of the National Verifier, which will resolve the problem industry-wide. USAC should apply the screen *after* performing identity checks against state databases, which may contain entries for deceased individuals.

Importantly, the FCC should direct USAC to apply this screen to the recertification process as well. This would ensure that individuals who pass away during the year are discontinued from Lifeline.

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[24] GAO May 2017 Report.

4. With the Verifier and APIs in place, the Commission should require Lifeline subscribers that cannot be re-verified through a database to produce additional eligibility documentation when they cease participating in the program used to demonstrate eligibility.

The *NPRM* proposed to have all Lifeline subscribers who cease to participate in the program that they used to demonstrate eligibility produce new documentation of eligibility upon annual recertification. This requirement would be overbroad, duplicative and violate the Paperwork Reduction Act if applied to states in which eligibility can be verified through a database. States do not tell carriers which program formed the basis for an eligibility determination, and, in any event, it does not matter if the subscriber ceased to participate in one program if they are also eligible under a different program.

Instead, to determine the eligibility of subscribers that cannot be verified through a database, the Commission should use the National Verifier, supplemented with APIs that allow the ETC to collect the necessary documentation from the consumer and present that documentation for USAC review and final decision on continued eligibility. This approach would ensure that only those subscribers for whom re-verification is an issue are required to produce new documentation, and streamline the process of reviewing that documentation for USAC. As with initial eligibility determinations, carriers should be permitted to initiate service and receive reimbursement based on a preliminary determination of eligibility, subject to true up if USAC ultimately determines that the subscriber is no longer eligible for Lifeline.

5. The Commission should direct USAC to compile lists of addresses likely to have significant numbers of independently eligible households.

Community institutions like shelters and nursing homes are very likely to have more than one independently eligible household living in the same USPS-validated address, but without separate dwelling unit identifiers, such as apartment numbers. The Commission recognized this problem in the *NPRM*, and proposed to solve it by requiring the facility manager to confirm residence and independent household status.[25] The Commission's proposal would unnecessarily burden the often vulnerable consumers who reside in these venues, as well as over-worked managers who may not have direct insight into the relationships among all those who live in the venue. Instead, to ensure that eligible persons in these residences have access to Lifeline, while discouraging fraudulent invocations that a particular address is a multi-person residence, the Commission should direct USAC to compile a list of multi-person residence addresses to help perform IEH checks.

The Commission therefore should not require a certification from a facilities-manager at these locations with significant numbers of independent households. For shelters, the population is transient and thus the certifications would be unmanageable. For assisted living or similar types of institutions, the facilities-manager may not complete the forms, which will result in denying service to an eligible person. In these situations, the risk of denying service to an eligible individual likely far outweighs the risk of providing Lifeline to an ineligible person, especially given the other identity and eligibility verification checks.

6. The Commission should implement risk-based auditing.

The *NPRM* seeks comment on whether the Commission should transition from a revenue-threshold-based auditing requirement to a risk-based auditing requirement.[26] Q Link believes that risk-based auditing is an important extra safeguard, but that the biennial audit requirement for entities that receive large amounts of Lifeline support should be maintained. Although these audits can be burdensome, they provide ongoing assurance that large Lifeline providers are

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[25] *NPRM* ¶ 99.

[26] *Id.* ¶ 86.

properly maintaining their books and records, and add an extra layer of protection against waste, fraud, and abuse.

7. The Commission should bar commissions or compensation tied to the number of successful enrollees individuals involved in reviewing or verifying subscriber eligibility.

Finally, the Commission should bar commissions for any individual involved in reviewing or verifying subscriber eligibility. This will ensure that individual making preliminary identity and eligibility verifications, subject to true-up based on USAC's final determinations, are not swayed by the prospect of more pay.Q Link does not pay individuals involved in reviewing or verifying applicant eligibility based on the number of successful applications – and, indeed, does not employ street agents or pay anyone else involved in taking applications based on the number of successful applications. Q Link strongly believes that the approach it has taken has been a driver of its integrity as a Lifeline program participant, as shown by its repeated, successful audits without any findings of inadequately documented or duplicate subscribers.

Although Q Link does not utilize street agents, it believes it would be premature to ban commissions for street agents without further experience under the National Verifier and the reforms outlined above. These measures should address the same potential for fraud as would a ban on agent commissions. If that does not prove to be the case, then the Commission could then move to ban street agent commissions.

III. IF THE COMMISSION INSTITUTES AN AUTOMATICALLY ENFORCING BUDGET, IT SHOULD SET A LEVEL THAT RECOGNIZES THAT LIFELINE IS UNDERENROLLED, AND THAT ALLOWS PROVIDERS AND CONSUMERS SUFFICIENT TIME TO ADJUST TO REDUCED SUPPORT LEVELS.

In the *2016 Lifeline Order*, the Commission adopted a $2.25 billion budget for the Lifeline program, and established a procedure to closely evaluate spending nearing the established budget amount and develop recommended next steps.[27] This approach imposed reasonable fiscal constraints, while allowing room for continued improvements in reaching eligible low-income consumers in hard-to-enroll places, like rural and suburban areas.

The Commission now proposes to replace the existing Lifeline budget with a self-enforcing cap set at levels that would turn back the clock on improvements in Lifeline participation, and shrink an already under-enrolled Lifeline program in the face of an expanding eligible population. This proposal would leave low-income consumers in the dust and at the whim of a constantly changing level of support, and would undermine the Commission's goal of bridging the digital divide. Accordingly, as the National Association of Regulatory Utility Commissioners recently endorsed, the Commission should maintain current budget levels, which allow for legitimate growth.[28] If the Commission chooses to adopt a self-adjusting mechanism, it must ensure that unspent funds are carried over, and that allow the market to adapt to support level fluctuations.

A. The Budget Should Not Choke Off the Provision of Lifeline Service to Needy Households.

Q Link understands that a budget is necessary to balance Lifeline need and the level of surcharges on affordability more generally. But under Section 254(b)(5), the Commission's budget must be consistent with the principle that support mechanisms be "specific, predictable

[27] *2016 Lifeline Order* ¶¶ 395-402.

[28] *See* NARUC, *Resolution to Ensure that the Federal Lifeline Program Continues to Provide Service to Low-Income Households* (rel. Feb. 13, 2018), https://pubs.naruc.org/pub/D7A0572B-B26C-51F5-1A9F-4B1C44635B86 ("NARUC Resolution").

and sufficient."[29] Section 254(e) likewise requires that support be "sufficient to achieve the purposes" of universal service.[30]

The Commission's proposal to cap Lifeline expenditures at previous disbursement levels would violate these statutory requirements, and unduly constrict broadband access for low-income Americans. As explained below, the Lifeline program remains substantially under-penetrated at *existing* disbursement levels, and the eligible population continues to grow each year. Moreover, previous-year Lifeline disbursements have remained artificially low due to FCC inaction in approving pending ETC petitions. As a result, the caps proposed in the *NPRM* bear no relationship to the amount that actually would be required to make universal service available to "low-income" Americans "in all regions," which the Commission has not even attempted to measure.

As the program currently stands, and despite years of improvement, Lifeline enrollment continues to lag far behind other low-income support programs, including the programs used to establish Lifeline eligibility. Based on data collected by the U.S. Census, Lifeline household participation rate is just 33 percent.[31] Yet the vast majority (76 percent) of Lifeline subscribers establish eligibility based on their qualification for Medicaid or SNAP,[32] which have much

[29] 47 U.S.C. § 254(b)(5).

[30] *Id.* § 254(e).

[31] USAC, *Eligible Lifeline Population Statistics* (Oct. 2015), http://www.usac.org/_res/documents/about/quarterly-stats/LI/Eligible-Lifeline-Population-Statistics.xlsx.

[32] USAC, *Chart of Lifeline Subscribers by Eligibility Program* (Oct. 2015), https://usac.org/_res/documents/about/quarterly-stats/LI/Subscribers-by-Eligibility-Program.pdf.

higher participation rates of 80 percent[33] and 83 percent[34] respectively. In addition, ETCs continue to pursue more effective means of reaching eligible consumers in suburban, exurban and rural areas to increase participation rates and promote the Commission's universal service goals. The National Association of Regulatory Utility Commissioners ("NARUC") recognized these trends in its recent resolution concerning the *NPRM*, which urged the Commission to ensure that "any budget it sets for the Lifeline program" does not cause "current subscribers" to "lose their eligible Lifeline benefit" and provides for "reasonable and rational growth in the Lifeline fund to serve subscribers in an amount that does not exceed the current soft budget notification amount [$2.25 million]."[35] Given that Lifeline participation rates are less than *half* the rates in other programs that benefit low-income populations, the Commission cannot reasonably slash the Lifeline budget and still meet its statutory mandate. Accordingly, the Commission should leave the current budget at $2.25 billion to allow for necessary, legitimate growth among the many eligible households that remain unserved by the Lifeline program today.

Indeed, the alternative budget amounts suggested by the Commission would be irrational. The *NPRM* suggests that the new cap might be set to the amount of Lifeline support provided in

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[33] The Henry J. Kaiser Family Foundation, *Medicaid/CHIP Parent Participation Rates, 2013-2015*, https://www.kff.org/medicaid/state-indicator/medicaidchip-parent-participation-rates/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D (last visited Jan. 19, 2018).

[34] USDA, *Trends in USDA Supplemental Nutrition Assistance Program Participation Rates: Fiscal Year 2010 to Fiscal Year 2015 (Summary)* (June 2017), https://fns-prod.azureedge.net/sites/default/files/ops/Trends2010-2015-Summary.pdf.

[35] NARUC Resolution at 1. *See also* Comments of the Minnesota Public Utilities Commission and Minnesota Department of Commerce at 10, WC Docket Nos. 17-287, 11-42 & 09-197 (filed Jan. 24, 2018) ("Minnesota PUC/DOC Comments") (urging the Commission to set the budget at a "level sufficient to facilitate additional enrollment of eligible households," noting that "[n]early 486,000 Minnesota households could have benefited from the program in 2015 but did not").

2008, which would result in a budget slashed by almost 64 percent.[36] But in 2008, the Lifeline program was widely acknowledged to be undersubscribed even more than it is today. As a result, 2008 Lifeline expenditures do not function as a reasonable proxy for the program's legitimate need. For the same reason, current expenditure levels do not offer a rational basis for a budget because Lifeline remains drastically underpenetrated—in part due to the Commission's own failures. By failing to grant any ETC designations in the 10 states that rely on federal designations over the past 6 years, the Commission has artificially suppressed enrollment, and cannot use expenditure levels driven by its languid indifference as a budget benchmark.

B. Any Self-Enforcing Mechanism Should Be Implemented Reasonably.

Q Link does not believe a self-enforcing mechanism would be reasonable in light of continued efforts to expand Lifeline service among eligible populations and raise the Lifeline program's unusually low participation rate. If the Commission adopts a self-enforcing mechanism, however, it should do so reasonably.

First, any self-enforcing mechanism should allow unspent funds committed to the Lifeline program to carryover to the following year. Carryover procedures are emerging as the norm in the universal service context,[37] and can help mitigate artificial budget reductions caused by underenrollment.

Second, if it adopts a self-enforcing budget, the Commission must recognize that neither providers nor consumers can adapt instantly to changes in support levels. To satisfy the statutory

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[36] *NPRM* ¶ 109.

[37] *See* 47 C.F.R. § 54.507(a)(5) (E-rate); *Promoting Telehealth in Rural America*, Notice of Proposed Rulemaking and Order, WC Docket No. 17-310, FCC 17-164, ¶ 19 (rel. Dec. 18, 2017) (carryover proposal for rural health care); *Connect America Fund et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order On Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, ¶ 4 (2014) (high cost support).

principle that universal service support be "predictable" and to avoid excessive impacts on communities served by Lifeline carriers,[38] any budget enforcement mechanism should provide the industry with 12 months from when support level reductions are announced to when those reductions become effective.

Reducing support means that providers will have to either revise Lifeline plans or institute new or additional charges to Lifeline consumers. From a strictly operational standpoint, these changes cannot be made overnight. Providers need at least 12 months to redesign their plans and to implement new consumer billing systems. The fact that so many Lifeline consumers lack access to the financial system—indeed, most of Q Link's customers are unbanked—create unique billing challenges that will require at least that much time to overcome.

The Commission's policy of avoiding destabilizing flash cuts applies with particular strength to the vulnerable low-income consumers that would be affected by support level reductions. These consumers will also need time to adjust to new plans, which, in light of reduced support levels, may have lower usage levels, higher charges, or some combination of both. Low-income individuals—who are already devoting a higher percentage of after-tax income to telephone services than all other consumers[39]—do not have the capacity to increase discretionary spending immediately and absorb those new charges, and thus may be forced to drop service upon which they have come to rely for core family and work responsibilities. The Commission must allow these consumers time to save or adapt accordingly.

Finally, it would be unreasonable for the Commission to preclude changes in rates or plans simultaneously with changes in support levels, or to fail to pair budget-driven support

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[38] 47 U.S.C. § 254(b)(5).

[39] *See supra* nn. 9-10 & accompanying text.

reduction with at least proportionate relief from mandatory minimum service requirements. Requiring ETCs to continue offering plans that cost more to provide than reduced support levels would effectively mandate that ETCs provide uncompensated service, which would be unreasonable in light of the program's universal service goals, and make support-level changes actionable as a taking.[40] Moreover, the Commission cannot reasonably reduce Lifeline support but continue to require the same minimum levels of service, unless it expects the difference to be made up by Lifeline consumers who are already having difficulty paying for telephone service and who, Q Link's experience, frequently have problems even coming up with an additional $5.

IV. BARRING MVNOS FROM LIFELINE IS INCONSISTENT WITH UNIVERSAL SERVICE, WILL HARM LOW-INCOME CONSUMERS, WILL NOT PROMOTE NETWORK DEPLOYMENT, AND IS UNNECSSARY TO PREVENT WASTE, FRAUD AND ABUSE.

In the *NPRM*, the Commission proposed to discontinue support for non-facilities-based service by "limiting Lifeline support to broadband service provided over facilities-based broadband networks that also support voice service."[41] Under the Commission's proposal, Lifeline providers "would only receive Lifeline support for service provided over the last-mile facilities they own."[42]

This proposal, if adopted, would have disastrous consequences for low-income Americans. For the 70 percent of Lifeline households served by MVNOs, it would eliminate low-income consumers' choice of provider, force them to find new providers, if any are available

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[40] *See FCC v. Florida Power Corp.*, 480 U.S. 245, 253 (1987) (regulation that requires service at confiscatory rates would be a taking).

[41] *NPRM* ¶ 67. The Commission also seeks comment on whether it should reverse forbearance from the requirement in 47 U.S.C. § 214(e) that ETCs "us[e] its own facilities or a combination of its own facilities and resale." *See id.* ¶¶ 69-70.

[42] *Id.* ¶ 67.

in their area, and diminish competition in a program where competition is both efficient and essential. The Commission's proposal would *eliminate* access to Lifeline wireless service *altogether* in the often rural areas that are unserved by a facilities-based MNO that is also an ETC, breaching the Commission's established universal service policies and clear statutory mandate in the process. The result would be a radical reduction in the number of *eligible* subscribers served by the Lifeline program—and an unwarranted expansion of a digital divide this proceeding was intended to narrow.[43]

These harms cannot be justified by the perceived benefits to the Lifeline program claimed in the *NPRM*. The proposed limitation would not "encourage investment in voice- and broadband-capable networks," as the *NPRM* incorrectly suggests.[44] Instead, it would impose an artificial restraint on market-driven specialization, reducing utilization of MNO networks and blunting incentives for wireless investment. Moreover, there is no indication that the proposed limitation would reduce rates of fraud, waste, and abuse in the Lifeline program, which can be better addressed through the steps described in Section II above.

A. The Commission Has Already Recognized Mobile Wireless Service As A Universal Service And Cannot Justify Reaching A Different Conclusion For Low Income Consumers Than For Consumers in Rural And High Cost Areas.

By now, it is well-established that mobile wireless service is a universal service for which federal universal support should be available. In the 2011 *USF/ICC Transformation Order*, the Commission explicitly determined that "the universal availability of modern networks capable of delivering mobile broadband and voice service in areas where Americans, live, work, or travel"

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[43] *Id.* ¶ 1 (proposing to "effectively and efficiently help close the digital divide for low-income consumers").

[44] *Id.* ¶ 67.

would be a performance goal for rural and high-cost support mechanisms,[45] and adopted Phase I of the Mobility Fund to "accomplish" its "universal service goal" of ensuring "ubiquitous availability of mobile services."[46] The Commission reiterated the same position just last year when it created the Mobility Fund II to support the expansion of mobile service in high-cost and rural areas that would not have service without support.[47] In the *Mobility Fund II Order*, the Commission "reaffirm[ed] that [it] should target universal service funding to support the deployment of the highest level of mobile service available today—4G LTE"[48] in areas that are not "already built out by private capital."[49] This is further confirmed by the fact that a majority of adults now live in wireless-only households.[50]

But a lack of infrastructure is just one barrier to universal service. Another key barrier is affordability. As a result, a rational universal service policy must provide rural and high-cost support in areas where buildout otherwise would be uneconomic *and* support to low-income consumers in the situation where the consumer cannot afford generally available offerings. Indeed, ensuring that low-income constituents have access to universal services like mobile wireless service was the express purpose of the Lifeline program, and remains a critical component of Section 254(b)'s statutory mandate.[51]

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[45] *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 53 (2011) ("*USF/ICC Transformation Order*"). *See also id.* ¶ 298.

[46] *Id.* ¶¶ 298-299.

[47] *See Mobility Fund II Order*.

[48] *Id.* ¶ 13.

[49] *Id.* ¶ 14.

[50] Wireless Substitution Report at 1.

[51] 47 U.S.C. § 254(b)(3) (requiring access for consumers "in all regions of the Nation, including low-income consumers").

Yet the Commission's proposal to eliminate MVNOs from the Lifeline program would also eliminate affordability as a pillar of universal service, because MVNOs play a critical role in serving low-income market segments that otherwise would be unserved. As the record demonstrates, MVNOs provide the vast majority—over 70 percent—of Lifeline services today.[52] As a result, excluding MVNOs from support would divest over 70 percent of consumers of their choice of providers, and force a disruptive and inevitably incomplete search for new wireless carriers that participate in the Lifeline program.

Moreover, as the Commission is aware, nationwide MNOs other than Sprint do not offer mobile Lifeline service at all, or do so only in a handful few states, because they have focused their resources on more lucrative segments of the wireless marketplace.[53] As a result, MVNOs are the *only* Lifeline provider in those parts of the country unserved by an MNO that is also an ETC. In these areas, which are often rural,[54] the elimination of Lifeline support to MVNOs would leave consumers entirely without mobile Lifeline service. Thus, whether intended or not, the systematic exclusion of some low-income consumers from access to mobile wireless services would be a necessary result of the Commission's proposal.

Indeed, recognizing that MVNOs "have been crucial in ensuring that low-income households are connected to vital telecommunication services," NARUC recently "urge[d] the

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[52] Letter from John Heitmann and Joshua Guyan, Counsel to the Lifeline Connects Coalition et al., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 17-287, 11-42, & 09-197, at 2 (filed Nov. 7, 2017) ("Lifeline Connects Nov. 7, 2017 Ex Parte").

[53] For example, the (unweighted) average ARPU among the four nationwide carriers for the fourth quarter of 2017 was $48 (postpaid) and $38 (prepaid, Sprint and T-Mobile only). *See infra* nn. 69-73. For TracFone, ARPU was just $24 for the same time period. *See infra* n. 75.

[54] As explained above, 62 percent of zip codes in which Q Link has a customer are rural, and more than 67 percent of Q Link's subscribers are located in rural or suburban areas. *See supra* page 2.

FCC to continue to allow non-facilities based carriers to receive Lifeline funds."[55] Specific public utility commissions echoed this concern in their comments. For example, the Indiana Utility Regulatory Commission explained that because resellers are the only ETCs "to provide Lifeline service in some areas of the state, . . . many areas of Indiana would not only be without a Lifeline provider, but also without any ETC" if MVNOs are excluded from the Lifeline program.[56] In addition, the Minnesota Public Utilities Commission and Department of Commerce expressed "concern[] that many Lifeline subscribers would not have a viable alternative if . . . last mile facilities are required of the ETC."[57] The Missouri Public Service Commission likewise noted that "large geographic areas in Missouri" would have "limited, if any, Lifeline service" because "AT&T's exit from the Lifeline program left only wireless resellers offering Lifeline service within AT&T's service territory in Missouri."[58] Even Citizens Against Government Waste opposed prohibiting MVNOs from the Lifeline program, noting that "a total ban on non-facilities based resellers of wireless services could have a negative impact on eligible subscribers."[59]

The Commission cannot ignore this problem. Not only would excluding low-income consumers from access to mobile wireless services expand the digital divide, it would raise serious questions about the lawfulness of the Commission's universal service policies. The

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[55] NARUC Resolution at 2.

[56] Comments of the Indiana Regulatory Utility Commission at 4, WC Docket Nos. 17-287, 11-42 & 09-197 (filed Jan. 24, 2018).

[57] Minnesota PUC/DOC Comments at 5.

[58] Comments of the Missouri Public Service Commission at 6, WC Docket Nos. 17-287, 11-42 & 09-197 (filed Jan. 24, 2018).

[59] Comments of Citizens Against Government Waste at 10, WC Docket Nos. 17-287, 11-42 & 09-197 (filed Jan. 24, 2018).

Commission has not proposed to revisit its prior determinations that mobile wireless service is in fact a universal service,[60] and could not revisit those determinations without undermining the basis for the ongoing implementation of the Mobility Fund. Rather, with its proposed elimination of Lifeline MVNOs, the Commission would maintain mobile wireless service's status as a universal service, but effectively shift its universal service policy into one that only requires rural and high-cost support.

That position cannot be justified. As an initial matter, it would contravene the fundamental purpose of the Lifeline program and violate the plain language of Section 254(b), which provides that "low-income consumers *and* those in rural, insular, and high cost areas, should have access to telecommunications and information services."[61] Moreover, the Commission has not offered any explanation of why access to telecommunications by low-income Americans would be a less desirable or attainable outcome of federal universal service subsidy programs than access in rural and high-cost areas.

Finally, it bears mention that the Commission's specific rationale for barring MVNOs is not only incorrect, but *is not grounded in principles of universal service at all.* The Commission *already has* universal service programs to ensure that infrastructure is built in areas where it otherwise would not be deployed. As a result, the Commission's MVNO exclusion would undermine low-income service in an attempt to shift dollars to infrastructure investments that *are not needed* to expand universal service. This would violate the "mandatory duty on the FCC" to

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[60] *Mobility Fund II Order* ¶¶ 13-14; *USF/ICC Transformation Order* ¶¶ 53, 298.

[61] 47 U.S.C. § 254(b)(3).

pursue universal service,[62] because the Commission "may not depart" from the universal service principles delineated in Section 254(b) "to achieve some other goal."[63]

B. Discontinuance of Non-Facilities-Based Support Would Eliminate Efficient Competition.

Even in areas served by an MNO that is also an ETC, the Commission's proposal would harm low-income consumers by undermining competition. That is because in areas where service from an MNO ETC is available, there is usually only one MNO ETC—Sprint—that offers service.

The suppression of competition that would result in these areas would be irrational. As the Commission has recognized, unlike in high-cost programs, making support available to multiple Lifeline competitors is efficient, because it promotes consumer choice and incentivizes quality service without duplicating public expenditures for constructing high-cost networks.[64] Indeed, even if MVNOs are eligible for Lifeline support, that support will go to just one ETC for any given Lifeline subscriber in any given month.[65] As a result, in the Lifeline context, the availability of multiple ETCs, through MVNOs, ensures that consumers can have a choice

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[62] *Qwest Corp. v. FCC*, 258 F.3d 1191, 1199 (10th Cir. 2001).

[63] *Id.* at 1200 (the Commission's discretion to depart from universal service principles may only be exercised to "balance the principles against one another when they conflict"). *See also In re FCC 11-161*, 753 F.3d 1015, 1055 (10th Cir. 2014); *accord Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 434 (5th Cir. 1999).

[64] *See Petition of TracFone Wireless, Inc. for Forbearance*, Order, 20 FCC Rcd 15095, ¶ 12 (2005) ("*TracFone Forbearance Order*").

[65] *Id*. Indeed, the Commission subsequently adopted the requirement that ETCs report Lifeline lines provided on the first day of the month, in order further to avoid any duplicate payments for service. *See Lifeline and Link Up Reform and Modernization*, Second Report and Order, Order on Reconsideration, Memorandum Opinion and Order, and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 7818, ¶ 243 (2015).

among Lifeline plans, with multiple carriers experimenting with the best way to design plans and to deliver them to consumers efficiently and with the best service.[66]

C. There is No Rational Basis for Concluding that Provision of Mobile Wireless Lifeline Through Last Mile Spectrum MNOs Will Be More Efficient, and Deliver More Support for Underlying Facilities, than Service Via MVNOs.

Contrary to the Commission's suggestion in the *NPRM*, limiting Lifeline support to MNOs will not encourage facilities-based investment. To the contrary, it will interfere with the market-driven specialization that has resulted in demand for MVNOs, reducing the returns on MNO network investment, and depriving MNOs of lucrative revenue streams that can be reinvested.

1. MVNOs increase utilization of and investment in mobile networks.

The relationship between MVNOs and facilities-based providers is purely market based. MVNOs and MNOs enter agreements because a commercial relationship meets both parties' strategic ends, not due to regulatory fiat. As the Commission recognized in its most recent report on wireless competition, "[a]greements between an MVNO and a facilities-based service provider" tend to "occur when the MVNO has better access to some market segments than the host facilities-based service provider," or when the MVNO "can better target specific market segments, such as low-income consumers[.]"[67] The MVNO's specialization promotes broader and deeper market penetration achieved at less cost—or greater efficiency, to use a simpler term.

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[66] *See TracFone Forbearance Order* ¶ 13 ("We also believe that this competition will spur innovation amongst carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers. We note that TracFone has created a wireless prepaid product that is neither dependent upon the retail service offerings of its underlying carriers nor simply a rebranding of the underlying carrier's retail service offering which may provide a valuable alternative to eligible consumers."

[67] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 et al.*, Twentieth Report, FCC 17-126, ¶ 15 (rel. Sept. 27, 2017).

Indeed, if MNOs could reach and service market segments targeted by an MVNO better on their own, they would have no reason to sell wholesale access pursuant to an MVNO agreement.

Importantly, the wholesale rates that an MNO charges an MVNO for access to the MNO's network are unregulated by the Commission, so there is no reason to believe that MNOs are not collecting fair value for the use of their spectrum and network facilities. By pricing wholesale access at a given rate, the MNO effectively determines that selling directly to certain market segments would cost the MNO *more* (including the opportunity costs) than the rate it charges to the MVNO, due to the MVNO's specialization, improved market information, and other economic benefits of the wholesale relationship.

Because MVNO-MNO agreements are market-driven, win-win relationships, MVNO *promote* utilization of MNO networks. MVNOs increase the amount of subscriber lines hosted by MNO networks by reaching consumers that might otherwise go unserved. They also increase the traffic handled by MNO networks, all of which is paid for at market rates and thus offers a valuable revenue stream to the facilities-based provider.

Q Link's role in the Lifeline marketplace provides a great example of efficient wholesale specialization at work. As explained above, Q Link has developed a unique, direct-to-consumer distribution model to reach rural and suburban low-income communities.[68] The availability of wholesale service encouraged the risk-taking that made it possible for Q Link to innovate and reach communities that are underserved by the street-agent model used by other carriers.

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[68] *See* Section I, *supra.*

2. MVNOs have been especially critical to the provision of Lifeline service.

The efficiency of MVNO arrangements has been demonstrated in the Lifeline context in particular. Nationwide MNOs other than Sprint have either significantly reduced or never undertaken offerings of mobile Lifeline services. These MNOs prefer to concentrate their marketing efforts on consumers with higher recurring revenues, rather than focusing on a low-margin market segment. This outcome is unsurprising. In the fourth quarter of 2017, nationwide carriers reported average revenues per user (ARPU) of $57 (AT&T),[69] $43 (Verizon),[70] $46 (T-Mobile),[71] and $45 (Sprint).[72] Even for prepaid customers, Sprint and T-Mobile earn an ARPU of $37[73] and $39[74] respectively. By contrast, TracFone, an MVNO serving 23.7 million lines, including approximately 3.6 million Lifeline lines, had an ARPU of just $24 for 4Q2017.[75]

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[69] AT&T, *Investor Briefing, No. 299*, at 11 (Jan. 31, 2018), https://investors.att.com/~/media/Files/A/ATT-IR/financial-reports/quarterly-earnings/2017/4q-2017/IB_4Q2017.pdf.

[70] Verizon, *4Q2017 Quarter Earnings*, at 5 (Jan. 23, 2018), http://www.verizon.com/about/investors/quarterly-reports/4q-2017-quarter-earnings-conference-call-webcast.

[71] T-Mobile US, Inc., *T-Mobile Reports Record Financial Results Across the Board for FY 2017, Issues Strong Guidance for 2018 and Beyond*, at 12 (Feb. 8, 2018), http://investor.t-mobile.com/Cache/1001231997.PDF?O=PDF&T=&Y=&D=&FID=1001231997&iid=4091145 ("TMUS Q42017 Report").

[72] News Release, Sprint Corporation, Sprint Reports Highest Retail Net Additions in Nearly Three Years and Raises Adjusted Free Cash Flow Guidance with Fiscal 2017 Third Quarter Results, at 4 (2018), http://s21.q4cdn.com/487940486/files/doc_financials/quarterly/2017/q3/01_Fiscal-3Q17-Earnings-Release-FINAL.pdf.

[73] *Id.*

[74] TMUS Q4 2017 Report.

[75] Carlos García-Moreno and Daniela Lecuona Torras, América *Móvil's fourth quarter of 2017 financial and operating report*, at 20 (Feb. 13, 2018), http://www.americamovil.com/sites/default/files/2018-02/4Q17_1.pdf. TracFone is the U.S. subsidiary of América Móvil.

Lifeline alone, with compensation rates of $9.25 plus whatever may be available from a state, presents a very unappealing market for carriers focused on receiving substantially more revenue per unit.

MVNOs have filled this critical gap to the point that they now serve the vast majority—nearly 70 percent—of mobile Lifeline subscribers, including subscribers in areas where there is no facilities-based Lifeline provider.[76] Again, there is no reason to believe that these MVNOs structure offerings, conduct marketing, interact with and service consumers, and bear regulatory compliance risks less efficiently than MNOs. Indeed, the MNO's belief that it cannot perform these functions as effectively, or without putting its core brand or business at risk, is the very reason it agrees to sell capacity on the wholesale market at the price paid by MVNOs.

The entry of MVNOs into the Lifeline market has also brought measurable improvements to the universal service bottom line by increasing telephone service penetration among low-income households. Since the Commission broadly permitted MVNOs to provide Lifeline service in 2005, telephone service penetration among low-income households has increased far more rapidly than for high-income households—direct evidence of a narrowing digital divide. Indeed, from 2005 (when the Commission issued its *TracFone Forbearance Order*) to 2016, the percentage of households with a telephone subscriber increased by 6.8 percentage points at incomes below $23,311 (2016 dollars), compared to an increase of just 2.0 percentage points in the highest income group ($92,839 or greater, 2016 dollars).[77] These gains could reverse if the Commission excludes MVNOs from the Lifeline program.

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[76] Lifeline Connects Nov. 7, 2017 Ex Parte at 2.

[77] Universal Service Monitoring Report 2016 at Table 6.2.

Finally, there is no reason to believe that MNOs who currently view Lifeline as an unproductive use of their resources will change their tune, and enter the Lifeline market if the Commission forces MVNOs to exit. But even if MNOs *do* enter the market, the elimination of Lifeline support to MVNOs *would still diminish facilities-based investment*, because MVNOs would remain necessary intermediaries that serve key segments of the Lifeline-eligible population.

Q Link's relationship with Sprint demonstrates why this is the case, and illustrates the arbitrariness of excluding MVNOs under the pretext of providing greater support for facilities deployment. Unlike other nationwide MNOs, Sprint is both a seller of wholesale capacity to MVNOs *and* a retail mobile Lifeline provider. Sprint can set is wholesale rate at whatever rate it wants, subject only to the limits of what other MNOs would charge for wholesale service. If Sprint were always more efficient at delivering Lifeline service with respect to all eligible low-income consumers, Sprint would have no incentive to provide wholesale service to Q Link. But Sprint *readily provides* wholesale service to Q Link, which shows that Sprint believes it can be more profitable selling wholesale service to Q Link than acting as the exclusive retail outlet for Lifeline services that use the Sprint network. That is to say, under Sprint's own calculus, Sprint will have more resources available to reinvest in its network with MVNOs like Q Link operating in the Lifeline market, *even though Sprint itself also provides retail Lifeline service*.

D. As Demonstrated in Section II, Eliminating MVNOs from Lifeline is Not Necessary To Prevent Waste, Fraud and Abuse.

In the *NPRM*, the Commission sought comment on whether limiting Lifeline support to facilities-based providers would "further the Commission's goal of eliminating waste, fraud, and abuse in the Lifeline program,"[78] observing that "the vast majority of Commission actions revealing waste, fraud, and abuse in the Lifeline program over the past five years have been against resellers, not facilities-based providers," and that "the proliferation of Lifeline resellers in 2009 corresponded with a tremendous increase in households receiving multiple subsidies under the Lifeline program."[79] The Commission also asked "[w]hy . . . waste, fraud, and abuse [have] increased" in absolute terms "since the advent of multiple resellers within the program in 2009."[80]

The answer is not related to the status of MVNOs as non-facilities-based providers, but to the increase in wireless subscribership across society as a whole and a long-recognized lack of sufficient controls that the FCC has been working to address through the creation of the NLAD and the National Verifier. In 2009, there were only about 274 million mobile wireless connections nationwide, with about 23 percent of adults in wireless only households.[81] As of June 2016, there were 338 million mobile wireless subscriptions, and 49 percent of adults resided in wireless-only households.[82] Among persons in poverty, adults in wireless-only households increased from 36 percent in 2009 to 63 percent in 2016. The Commission recognized when it

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[78] *NPRM* ¶ 68.

[79] *Id.*

[80] *Id.*

[81] FCC 15th Mobile Wireless Competition Report, FCC 11-103, at 248 Table C-2 (rel. Jun. 27, 2011), https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-103A1.pdf; Stephen J. Blumberg, Ph.D., and Julian V. Luke, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2009*, at 2 (Dec. 2010), https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201005.pdf

[82] Wireline Competition Bureau, *Voice Telephone Services: Status as of June 30, 2016*, at 2 (Apr. 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-344500A1.pdf; Stephen J. Blumberg, Ph.D., and Julian V. Luke, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January-June 2016* (Dec. 2016), https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201612.pdf.

created NLAD that its existing mechanisms were not sufficient to prevent multiple Lifeline subscriptions per individual or per eligible household in an environment in which each person could have one or more cellular phones.[83] And the reason most Commission actions concerning waste, fraud, and abuse have been against resellers is that MVNOs provide far more Lifeline service than MNOs. Indeed, 70 percent of mobile Lifeline service is now provided by an MVNO,[84] and 4 of the top 5 Lifeline providers (wireline and wireless) are resellers.[85]

The creation of the National Verifier is the second phase to prevent waste, fraud and abuse, regardless of the type of provider (whether wireline, wireless, MNO or MVNO). The Commission in 2012, in the same order in which it broadly forbore from the facilities-based requirement for Lifeline-only ETCs, also began the rulemaking process to create the National Verifier. Without the National Verifier in place, the Commission has had to rely on ETCs to make judgments as to a potential subscriber's eligibility, which left an opening for fraud and abuse, particularly from commission-based street agents. However, as detailed in Section II above, there are a number of steps that can taken in conjunction with the implementation of the National Verifier with APIs, that the Commission can take to reduce rates of waste, fraud and abuse by *all* ETCs participating in the Lifeline program, MNOs and MVNOs, wireless and wireline alike. The Commission has no basis for concluding that there would be any residual fraud problem specific to MVNOs that would remain after implementing all of those reforms.

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[83] *Lifeline and Link Up Reform and Modernization et al.,* Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, ¶¶ 74-78, 180-182.

[84] Lifeline Connects Nov. 7, 2017 Ex Parte at 2.

[85] Universal Service Monitoring Report 2016 at 27 & Table 2.5.

V. ETC PROVISION OF HANDSETS TO CONSUMERS AT LOW OR NO CHARGE DOES NOT VIOLATE SECTION 254(e).

In the *NPRM*, the Commission suggests that "Lifeline resellers" cannot provide customers with "free phones and equipment," because doing so would impermissibly divert federal funding to "non-eligible expenses" in violation of Section 254(e). As explained in the Tenth Circuit's holding in *Sorenson v. FCC*, the Commission's assertion miscomprehends the economics of the Lifeline subsidy program, and would impose an arbitrary limitation on how Lifeline providers help low-income consumers. It also relies on an irrational interpretation of Section 254(e). Accordingly, the Commission should refrain from making any determination that Lifeline providers cannot supply handsets to consumers.

In *Sorenson v. FCC*, the Tenth Circuit reviewed a 2008 declaratory ruling prohibiting providers of VRS from using revenues received from the Telecommunications Relay Services Fund ("TRS Fund") for lobbying and advocacy expenditures, even though TRS Fund support was subject to a price cap.[86] The FCC attempted to justify its restriction on the basis that "lobbying end users was not an activity the TRS Fund was intended to compensate, and therefore monies from the TRS Fund were not permitted to be used for that purpose."[87] On review, the court explicitly rejected the Commission's justification, viewing it as inconsistent with the fixed-support nature of the design of the TRS subsidy program, which "does not reimburse VRS providers for actual costs."[88] As the court explained,

> The FCC's justification is inconsistent with the logic of a price cap based compensation system. The FCC has chosen to reward efficient providers by allowing them to retain the savings generated by providing TRS at a low cost. It does this by compensating providers regardless of their actual costs in providing

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[86] *Sorenson*, 567 F.3d at 1220.

[87] *Id.* at 1221.

[88] *Id.*

> TRS. This reward mechanism is only effective if providers are permitted to decide how to spend those savings.[89]

Sorenson is on all fours with the issue of handset expenditures raised in the *NPRM*. Like the VRS program, which compensated providers at a fixed rate per minute of service, the Lifeline program provides ETCs with a *fixed amount* of support per subscriber—$9.25—so long as the provider meets the minimum service levels set by the FCC in regulations.[90] And like the VRS program, Lifeline does not reimburse ETCs for their actual costs of providing qualifying service to a low-income customer plus a permitted rate of return.

If Lifeline were a support mechanism that computed reimbursements based on costs plus a rate-of-return, as some high cost mechanism do, the nature of each of the provider's expenditures would be relevant to determine whether federal support was prudently spent. But that is not the case. As the court in *Sorenson* explained, support provided as a fixed amount per subscriber functions as a form of incentive regulation in which costs are unregulated. Thus, so long as a Lifeline provider has provided a qualifying Lifeline subscriber with qualifying service, it may spend its money however it sees fit. And better that the Lifeline provider spend money on providing consumers with the ability to utilize the service—as a free handset does—than on other expenses that do not directly benefit customers at all, which the *Sorenson* court *still* found permissible. In short, if an ETC chooses to invest what would otherwise be profits in providing no- or low-cost handsets to Lifeline users, that investment is beyond the Commission's purview under the Lifeline support structure.

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[89] *Id.*

[90] Lifeline rules also require that the full amount of support pass through to the Lifeline customer. *See* 47 C.F.R. § 54.403. That rule, of course, does not preclude an ETC from passing through *more* than $9.25 to the customer by improving its efficiency and foregoing profit as opposed to providing less than minimum service.

VI. LIMITING LIFELINE TO RURAL AREAS VIOLATES SECTION 254 AND CANNOT BE RECONCILED WITH THE PRINCIPLES OF UNIVERSAL SERVICE.

In the *NOI*, the Commission seeks comment on whether it should radically repurpose the Lifeline program. Under the Commission's proposal, Lifeline would transform from a program that seeks to serve low-income Americans wherever they may live into a program that "encourage[s] broadband deployment"—and only for Americans in "rural or rural Tribal areas."[91] This approach cannot be reconciled with principles of universal service, and should be rejected by the Commission.

Under Section 254(b) of the Communications Act, the FCC must "base its universal service policies on" particular statutory principles enumerated by Congress.[92] Those statutory principles include the provision of telecommunications and information services to consumers, "including low-income consumers," in "*all regions* of the Nation," including "rural, insular, and high cost areas."[93] Because these principles are "mandatory," the Commission "must work to achieve *each*" principle "unless there is a direct conflict between it and either another listed principle or some other obligation or limitation on the FCC's authority."[94]

What could the conflict be? The Commission proposes to provide "enhanced support" in rural areas to incent providers to invest in their networks, and to otherwise "focus[] Lifeline support in areas where providers need additional incentive to offer high-speed broadband

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91 *Bridging the Digital Divide for Low-Income Consumers et al.*, Notice of Inquiry, FCC 17-155, ¶ 123 ("*NOI*").

92 *Qwest*, 258 F.3d at 1199.

93 *See* 47 U.S.C. § 254(b)(3).

94 *Qwest*, 258 F.3d at 1199-1200.

service."[95] But it ignores that it has created separate programs that *already* identify areas where such an incentive would be required, and that provide the incentive in the form of rural and high-cost support. As a result, "enhancing" or "focusing" support in rural areas would not reconcile a conflict, but create one. Even under a fixed budget constraint, there is no reason to believe that providing Lifeline dollars in an urban area will deprive other areas of sufficient network investment where buildout is economic, or has been made economic through other support programs. If the support available under rural and high-cost programs is insufficient, the Commission should adjust those support levels instead of relying on a program that addresses affordability barriers very efficiently, but does not address infrastructure deployment barriers efficiently at all.

Moreover, the Commission's rationale for refocusing support away from suburban and urban areas is irrational. The Commission observes that "[r]ural and rural Tribal areas have higher percentages of broadband non-adopters compared to other areas," and claims that it would be more efficient to target support to non-adopters.[96] But the Commission conflates populations with higher adoption rates with populations that will sign-up for telephone service without a subsidy, ignoring that much simpler explanations, such as outreach and the ease of enrollment, likely account for the difference.[97] Indeed, the Commission's laudable goal of improving Lifeline participation by rural and Tribal communities can be better met by steps such as supporting continued improvements in outreach and streamlining the enrollment process—a step that the National Verifier with carrier APIs would help the Commission accomplish.

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[95] *NOI* ¶¶ 123, 124.

[96] *Id.* ¶ 124 & nn. 239 & 240.

[97] *Id.* ¶ 124 n. 240.

VII. THE COMMISSION SHOULD NOT SET MAXIMUM DISCOUNT LEVELS FOR LIFELINE.

In the *NPRM*, the Commission sought comment on whether it should "apply a maximum discount level for Lifeline services above which the costs of the service must be borne by the qualifying household."[98] The Commission should reject this proposal, which would undermine Lifeline's principal objective of maintaining affordability and access to low-income populations.

Even under the current Lifeline rules, the lowest quintile of U.S. households—those with incomes below $19,868—continue to pay a far higher percentage of their after-tax income for telephone services than do all other Americans.[99] By requiring subscribers to pay more for Lifeline service, even if a provider is willing to provide qualifying service for free or at a large discount under current support levels, the Commission would simply make telephone services less affordable, harming, rather than improving access to universal service. Although the concept of a cost share makes sense in many subsidy programs, it is hardly necessary in cases where the entire purpose of the subsidy is to overcome barriers created by severe financial hardship.

A maximum discount level would be inappropriate for the additional reason that there is no need to control excessive purchasing in the Lifeline program beyond preventing duplicate enrollment and enrollment by ineligible persons. Unlike the E-rate and Rural Health Care contexts – or copayments for Medicare – the Lifeline subscriber cannot increase consumption of Lifeline services. Lifeline support remains at $9.25 per subscriber, for a package of services at

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[98] *NPRM* ¶ 112.

[99] *See* Figure 1, at n. 9 *supra* (showing that the lowest quintile of U.S. households spends an average of 6.1% of their after-tax income on telephone services).

least meeting the mandatory minimums, and the ETC's support payment does not increase if the subscriber purchases a greater volume of services.

VIII. IF THE COMMISSION CONTINUES THE SUNSET OF VOICE-ONLY SUPPORT, IT MUST ADOPT THE UNITS PROPOSAL IN ORDER TO JUSTIFY SUPPORT FOR BROADBAND SERVICE.

As the Commission acknowledges, its legal authority for providing Lifeline support for broadband depends on the continued definition of voice service as a supported service.[100] But as the FCC phases down voice-only service, it could put its statutory basis for promoting broadband at risk, in light of its recent decision to reclassify mobile broadband internet access service as an information service.[101] The Commission can address that issue by adopting the "units" proposal advanced by TracFone in 2017[102] and Q Link in 2016,[103] which would allow providers to meet minimum service standards by providing minutes that can be used for voice or data at the consumer's election.

A "units" proposal would ensure that plans can offer voice and broadband, and would reinforce the Commission's statutory basis for support in the wake of broadband reclassification. As the Commission recognized in the *NPRM*, permitting "units" plans would also improve consumer choice.[104] As TracFone explained, units plans "afford Lifeline customers flexibility to

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[100] *NPRM* ¶ 77.

[101] *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, FCC 17-166 (rel. Jan. 4, 2018).

[102] *See* Letter from Mitchell F. Brecher, Counsel to TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-42 (filed Sept. 20, 2017).

[103] Q Link Petition for Reconsideration, WC Docket Nos. 11-42, 09-197, & 10-90 (filed Oct. 28, 2016) ("Q Link Petition").

[104] *Id.* ¶ 80.

utilize their wireless Lifeline service as they choose based upon their own needs . . ."[105] Moreover, as Q Link pointed out, prohibiting units plans could force low-income consumers to obtain more data than they need if they also want to be able to place voice calls.

Importantly, permitting units plans would not require any change in the Commission's rules. It merely would require granting reconsideration of the Wireline Competition Bureau's September 30, 2016 Public Notice[106] as Q Link timely sought.[107] As Q Link explained in its petition for reconsideration, the minimum service requirements established in the *2016 Lifeline Order* already permit consumers to trade voice for broadband usage, and vice versa.[108] More specifically, for mobile service, that order and sections 54.408(a)(1) and (b)(2) of the Commission's rules simply require that an ETC "provide" service meeting the mandatory minimum standard.[109] And in the *2016 Lifeline Order*, the Commission interprets "provide" as "make available."[110] Because a "units" plan "makes available" the required amount of data, even if, in a given month, the consumer may choose to use less than the minimum number of standalone because he or she chose to substitute voice usage, a units plan would meet the

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105 *Id.*

106 *Wireline Competition Bureau Provides Guidance Regarding Designation as a Lifeline Broadband Provider and Lifeline Broadband Minimum Service Standards*, Public Notice, DA 16-1118, WC Docket Nos. 11-42, 09-197 ¶ 15 (Wireline Comp. Bur. Sept. 30, 2016) (the "*Public Notice*") (irrationally determining "that 'substitution' or 'decremented' bundled offerings do not fulfill the requirements of the Lifeline minimum service standards if they restrict a customer's access to the supported service for which the provider is claiming Lifeline reimbursement below the minimum service standard applicable to that supported service as a result of the customer's usage of some other service included in the bundled offering").

107 *See* Q Link Petition.

108 *See id*. at 6.

109 47 C.F.R. §§ 54.408(a)(1), (b)(2).

110 *See 2016 Lifeline Order* at ¶ 263, n. 710.

minimum standards for broadband according to existing rules.[111] The Commission must simply clarify that this is the case, which it can do by granting Q Link's petition.

IX. THE COMMISSION MUST RECOMMENCE THE PROCESSING OF ETC APPLICATIONS AND COMPLIANCE PLANS.

In the [ten] states in which the state public utilities commissions lack jurisdiction to approve ETC applications, the FCC designates ETC. The Commission has not approved a Lifeline ETC in the states under its jurisdiction since 2014. The statutory mechanism cannot function properly with the FCC simply sitting on all pending applications. Q Link, for example, has been unable to enter its home state of Florida, and to use its automated methods to reach low income consumers in suburban and rural parts of the state. The same is true in the other FCC-designated states, which include substantial rural areas.

Along with completing this rulemaking, the Commission must recommence processing these pending applications.

CONCLUSION

The Commission is right to identify ways to make the Lifeline program more efficient and less prone to waste, fraud, and abuse. But while some of the methods it has identified are sensible, many would increase a digital divide this proceeding was created to reduce.

The Commission should proceed with implementation of the National Verifier, but supplement USAC's current plans with carrier APIs. It should adopt reforms, many of which will be enabled by an API-based Verifier, that target the largest sources of fraud in the Lifeline program. The Commission should not, however, exclude MVNOs from offering Lifeline service, which would deprive many low-income Americans of access to mobile Lifeline

[111] *See* Q Link Petition at 6.

altogether, while reducing mobile network investment. There is no reason to believe that the MVNO model is inherently prone to fraud, which is better addressed through initiatives like the National Verifier.

The Commission also should ensure that the budget for Lifeline is consistent with its status as a deeply under-penetrated service, and recognize that Lifeline providers may forgo as much revenue as they wish to provide subscribers with added benefits including free handsets. In addition, the Commission should abandon the radical changes to the Lifeline program proposed in the *NOI*, which would hamper the program's ability to serve low-income Americans wherever they may live, and would be unlawful. Finally, the Commission should grant Q Link's October 2016 petition for reconsideration to clarify that "units" plans can meet minimum service standards, and resume the processing of ETC applications.

Respectfully submitted,

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